

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROSA M. CANO

Claimant

VS.

IBP, INC.

Respondent

Self-Insured

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Docket No. 198,801

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Pamela J. Fuller on April 5, 2000. The Appeals Board heard oral argument August 30, 2000. Jeff K. Cooper was appointed Board Member Pro Tem to serve in place of Board Member Gary M. Korte who recused himself from this proceeding.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared on behalf of claimant. Wendel W. Wurst of Garden City, Kansas, appeared on behalf of respondent, a qualified self-insured.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge awarded benefits for an 8 percent permanent partial general disability to the body as a whole based on functional impairment. Claimant does not seek work disability but argues the award should be based on a higher functional impairment. The extent of claimant's functional impairment is the only issue on appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

The parties have stipulated that claimant met with personal injury by accident arising out of and in the course of her employment on January 30, 1995. The injuries arise from repetitive work activities and claimant reported symptoms in her back, both arms, and both hands. Claimant received treatment from Dr. Myron J. Zeller, Dr. Bernard Hearon, and ultimately Dr. C. Reiff Brown.

Dr. Brown diagnosed biceps and rotator cuff tendinitis. He rated the permanent impairment as 5 percent of each upper extremity or 7 percent of the whole person.

Claimant was also examined and her impairment rated by Dr. Pedro A. Murati and Dr. Sergio Delgado. Dr. Murati saw claimant at the request of claimant's counsel. Dr. Murati diagnosed probable bilateral carpal tunnel syndrome and bilateral shoulder strains with myofascial pain component referring pain into the upper back. He rated the impairment as 15 percent of each extremity or 17 percent of the whole person.

Dr. Delgado saw claimant for an independent medical examination at the request of the Administrative Law Judge. Dr. Delgado concluded the only clinical finding was a positive impingement sign of both shoulders with mild grating bilaterally but no evidence of shoulder instability. He rated the impairment as 8 percent of the whole person. The ALJ adopted and awarded benefits based on Dr. Delgado's opinion.

Claimant now argues the ALJ has failed to properly give consideration to the opinion of Dr. Murati. The Board agrees the opinion of the physician appointed by the ALJ should not be blindly adopted in all cases. The physician appointed by the ALJ should, on the other hand, be neutral. This does not always mean the rating is most accurate. In this case, the rating by the physician appointed by the ALJ corresponds closely with that of the treating physician and appears to appropriately evaluate claimant's impairment. The Board agrees with and affirms the decision by the ALJ.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Pamela J. Fuller on April 5, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
Jennifer L. Hoelker, Dakota City, NE
Wendel W. Wurst, Garden City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director